

EXHIBIT E

**TO DECLARATION OF ANA YANG MULLER
IN SUPPORT OF FACEBOOK, INC.'S OPPOSITION
TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

[PUBLIC DOCUMENT]

Terms of Use

Date of Last Revision: February 4, 2009.

Welcome to the Facebook Service, a social utility that connects you with the people around you. The Facebook Service (defined below) is operated by Facebook, Inc. and its subsidiaries and affiliates ("us," "we" or "Facebook"). By using or accessing the Facebook Service, you agree that you have read, understand and are bound by these Terms of Use ("Terms"). We reserve the right, at our sole discretion, to change or delete portions of these Terms at any time without further notice. Your continued use of the Facebook Service after any such changes constitutes your acceptance of the new Terms.

Privacy

We care about the privacy of our users and encourage you to read our [Privacy Policy](#).

Eligibility

You may not use the Facebook Service if you are under 13. If you are between the ages of 13 and 17, we strongly suggest that you seek parental consent to use the Facebook Service. If you are required to register as a sex offender in any jurisdiction, you may not use the Facebook Service.

Registration; Account Security

When you register for and use the Facebook Service, you will be asked to provide information about yourself ("User Data"). Your User Data must be accurate and current at all times. You are solely responsible for maintaining the security of your account. This means, for example, that you may not share your password or let anyone else access your account. If you have reason to believe that your account is no longer secure, please let us know immediately.

Prohibited Conduct

By using or accessing the Facebook Service, you represent, warrant and agree that you will not:

- do anything that could disable, overburden or impair the proper working of the Facebook Service;
- use any robot, spider, scraper or other automated means to access the Facebook Service;
- send spam or any other unauthorized advertisements or solicitations through or using the Facebook Service;
- harvest, collect or use addresses, phone numbers or email addresses or other contact information (collectively "Contact Information") of users of the Facebook Service without consent from such users;

- solicit private information (including social security numbers, credit card numbers and passwords) from users of the Facebook Service;
- provide any false personal information in your profile, create more than one profile, transfer your profile, create a profile for anyone other than yourself or create a page without authorization;
- use your profile (as opposed to a Page) for any commercial purpose;
- offer any contest, sweepstakes, coupon or other promotion through the Facebook Service without our prior written consent;
- use an iFrame or offer web search functionality on the Facebook Service;
- intimidate or harass any user;
- do anything that is illegal, infringing, fraudulent, malicious or could expose Facebook or the Facebook Service users to harm or liability; or
- attempt, encourage or facilitate any of the above.

User Content

By using or accessing the Facebook Service, you represent, warrant and agree that you will not Post:

- User Content that violates the law or anyone's rights, including intellectual property ("IP") rights or other proprietary rights (such as rights of publicity and privacy);
- any Contact Information or private information of any third party;
- false, misleading or fraudulent information;
- any material that contains software viruses or any other computer code designed to interrupt, destroy, or limit the functionality of any computer or telecommunications equipment;
- alcohol-related or other mature content on Pages on the Facebook Service that have not set appropriate age based restrictions (based on the country in which the page will be viewable); or
- User Content that is threatening, hateful, racially or ethnically offensive, or that depicts nudity, pornography or graphic or gratuitous violence, or anything else that we may consider offensive.

Facebook does not pre-screen, review, edit or approve any User Content. Facebook may, in its sole discretion, remove or disable access to any User Content.

"User Content" means any photos, text, link, audio, video, designs, ads and anything else that you Post on or through the Facebook Service. "Post" means to upload, post, transmit, share, store, link to or otherwise make available on or through the Facebook Service.

IP Complaints

We respect the IP rights of others and we prohibit users from Posting User Content that violates another party's IP rights. When we receive a proper claim of IP infringement, we promptly remove or disable access to the allegedly infringing User Content. We also terminate the

accounts of repeat infringers in appropriate circumstances. If you believe that User Content on the Facebook Service infringes your IP rights, please visit our [How to Report Claims of Intellectual Property Infringement page](#). All IP claims can be made through that page, including any copyright claims, which will be handled in accordance with the Digital Millennium Copyright Act. If you are a user whose User Content was removed due to alleged copyright infringement, and you believe the removal was mistaken, please visit our [How to Appeal Claims of Copyright Infringement page](#).

Mobile

There are features of the Facebook Service that may be accessible via certain mobile carriers (the "Mobile Services"). While we currently do not charge for these Mobile Services, your carrier's normal messaging, data and other rates and fees will still apply. By using the Mobile Services, you agree that we may communicate with you by SMS, MMS, text message or other electronic means to your mobile device, and that certain information about your usage of the Mobile Services may be communicated to us. In the event you change or deactivate your mobile telephone number, you agree to promptly update your account information on the Facebook Service to ensure that your messages are not sent to the person that acquires your old number.

Third Party Applications and Connect Sites

The "Facebook Platform" is a set of APIs and services that third parties may use to (a) create applications for use on the Facebook Service ("Applications") and (b) enable their websites to work like Applications ("Connect Sites") through Facebook Connect ("Connect"). Applications and Connect Sites will be referred to together as "Applications/Connect Sites," which should be read as Applications and/or Connect Sites.

If you authorize an Application or allow a Connect Site to connect with your account on the Facebook Service, you agree that such Application/Connect Site can (a) access information on the Facebook Service related to you (including your profile information, friends and privacy settings) and (b) generate and publish news feed and other stories about actions you take on such Application/Connect Site without any additional permission. If you want to change the information that Applications/Connect Sites can access, you may modify your [privacy settings](#). If you no longer want these news feed or other stories to be published, you can disable this feature by changing your [application settings](#). If you, your friends or members of your network use any Application/Connect Site, such Applications/Connect Sites may access and share certain information about you with others in accordance with your [privacy settings](#).

Once you allow a Connect Site to connect with your account on the Facebook Service, you will be able to use your login information for the Facebook Service to log into and interact with your friends on that Connect Site. In order to make Connect possible, you agree to allow us to check your cookies for the Facebook Service when you are visiting Connect Sites. When your friends connect their account on the Facebook Service with a Connect Site, Connect will enable them to find friends on the Facebook Service that may also be users of that Connect Site and invite them to use Connect as well. If you do not want your friends to be able to invite you to connect on a

Connect Site, you may change your [privacy settings](#) to disable this feature. Even if you have not gone through the Connect process, you may be able to authorize a Connect Site to generate and publish news feed and other stories about an action or all actions that you take on that Connect Site. If you want to change your settings for that Connect Site, visit your [application settings](#).

Your Privacy Practices

We respect the privacy rights of third parties, and you must do so as well on the Facebook Service.

If you collect, access or use information relating to any user of the Facebook Service (including information contained in any user profile) you must obtain consent from the user and make it clear to the user that the collection, access and use is being carried out by you and not Facebook.

Gift Credits

You must be authorized to use the credit card, debit card or other payment source ("Card") you provide to purchase gift credits. By purchasing gift credits, you authorize Facebook or its designated payment processor to charge the purchase amount (plus any applicable tax) to your Card. By providing your Card account information to Facebook, you authorize us to collect and store it and other related transaction information.

When you purchase gift credits, you are purchasing only a limited license to use certain features on the Facebook Service that will enhance your experience on the Facebook Service, such as giving virtual gifts to your friends. Gift credits have no real value, are non-refundable and are not redeemable for any sum of money or monetary value from Facebook at any time. Facebook does not guarantee the transferability of gift credits. Gift credits may not be transferred to any third party outside of the Facebook Service and may not be used as a means to transfer money to a third party. You agree that Facebook has the absolute right to manage, regulate, control, modify and/or eliminate gift credits as it sees fit, and Facebook will have no liability to you for exercising such rights.

Ownership; Proprietary Rights

Except for User Content and Applications/Connect Sites, all materials, content and trademarks on the Facebook Service are the property of Facebook and/or its licensors and are protected by all relevant IP laws and other proprietary rights (including copyright, trademark, trade dress and patent laws) and any other applicable laws. Without limiting the foregoing, FACEBOOK, the F LOGO, FB, FACE, POKE, THE WALL and 32665 and all related logos, are trademarks of Facebook. Except as expressly authorized by Facebook in writing, you agree not to use, sell, license, distribute, copy, publish, stream, publicly perform or display, transmit, reformat, modify, edit, frame, translate, excerpt, adapt, create derivative works or otherwise make unauthorized use of the materials, content or trademarks.

Licenses

You are solely responsible for the User Content that you Post on or through the Facebook Service. You hereby grant Facebook an irrevocable, perpetual, non-exclusive, transferable, fully paid, worldwide license (with the right to sublicense) to (a) use, copy, publish, stream, store, retain, publicly perform or display, transmit, scan, reformat, modify, edit, frame, translate, excerpt, adapt, create derivative works and distribute (through multiple tiers), any User Content you (i) Post on or in connection with the Facebook Service or the promotion thereof subject only to your [privacy settings](#) or (ii) enable a user to Post, including by offering a Share Link on your website and (b) to use your name, likeness and image for any purpose, including commercial or advertising, each of (a) and (b) on or in connection with the Facebook Service or the promotion thereof. You represent and warrant that you have all rights and permissions to grant the foregoing licenses.

If you own or control a website, you may place Facebook's share link button, logo and/or text (a "Share Link"), including all trademarks therein, on your website for the sole purpose of enabling users to Post links or content from your website on the Facebook Service. By offering a Share Link on your website, you agree, represent and warrant that you will not place a Share Link on any page containing content that would violate these Terms if Posted on the Facebook Service. The rights granted in this paragraph may be revoked by us at any time in our sole discretion, and upon such termination, you will immediately remove all Share Links from your website.

Submissions

You acknowledge and agree that any questions, comments, suggestions, ideas, feedback or other information that you provide to Facebook ("Submissions"), are non-confidential and non-proprietary. Facebook will be entitled to the unrestricted use of any such Submission for any purpose, commercial or otherwise, without acknowledgment or compensation to you.

User Disputes; Complaints

You agree not to hold Facebook responsible or liable for the User Content or actions of third parties (including your interactions with users) on or relating to the Facebook Service. This includes transactions conducted on the Facebook Service as well as the collection, handling and sharing of personal information that you provide to third parties. If you have a dispute with a third party relating to the Facebook Service, you release Facebook and its directors, officers, employees and agents (collectively, the "Facebook Entities") from any claims, causes of action and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with such dispute. If you are a California resident, you waive California Civil Code §1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

If you believe that the Facebook Service or Facebook's business practices are in any way unfair, fraudulent or unlawful, you agree to bring it to the attention of Facebook's legal department. If

you do not report the issue or continue using the service after discovering the issue, you expressly waive the right to claim that the Facebook Service is unfair, fraudulent or unlawful with respect to that issue.

Indemnity

You agree to indemnify and hold Facebook Entities harmless from and against any claim or cause of action brought by a third party as well as any related damages, costs and expenses (including reasonable attorneys' fees) ("Claim") arising out of or related to your (a) use of the Facebook Service or any of the applications, features, content or materials related thereto; (b) violation of these Terms; (c) violation of the rights of any other person or entity; or (d) breach of the representations, warranties and covenants made by you herein. Facebook reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify Facebook, and you agree to cooperate with Facebook's defense of these Claims.

General Disclaimers

USE OF THE FACEBOOK SERVICE IS AT YOUR OWN RISK. THE FACEBOOK SERVICE, FACEBOOK WEBSITES AND ALL APPLICATIONS, FEATURES, CONTENT AND MATERIALS MADE AVAILABLE ON, IN CONJUNCTION WITH OR THROUGH THE FACEBOOK SERVICE ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, FACEBOOK, ITS SUPPLIERS, LICENSORS AND PARTNERS DISCLAIM ALL WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS. WITHOUT LIMITING THE FOREGOING, FACEBOOK, ITS SUPPLIERS, LICENSORS AND PARTNERS DO NOT WARRANT THAT THE FACEBOOK SERVICE WILL BE AVAILABLE, UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED OR THAT THE FACEBOOK SERVICE OR THE SERVER THAT MAKES IT AVAILABLE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

FACEBOOK IS NOT RESPONSIBLE OR LIABLE FOR, AND DOES NOT APPROVE OR ENDORSE ANY THIRD PARTY CONTENT, MATERIALS, WEBSITES OR APPLICATIONS MADE AVAILABLE ON OR THROUGH THE FACEBOOK SERVICE (COLLECTIVELY, "THIRD PARTY MATERIALS"). WITHOUT LIMITING THE FOREGOING, WE ARE NOT RESPONSIBLE FOR THE CONTENT, ACCURACY, AVAILABILITY, OFFENSIVENESS, OPINIONS, RELIABILITY, PRIVACY PRACTICES OR OTHER POLICIES APPLICABLE TO SUCH THIRD PARTY MATERIALS, AND WE CANNOT AND DO NOT GUARANTEE THAT THIRD PARTY MATERIALS WILL COMPLY WITH THE RESTRICTIONS, CONDITIONS OR OBLIGATIONS THAT WE REQUIRE. IF YOU DECIDE TO USE OR ACCESS THIRD PARTY MATERIALS, YOU DO SO AT YOUR OWN RISK AND YOU MAY BE REQUIRED TO AGREE TO TERMS OF

SERVICE, PRIVACY AND DATA GATHERING PRACTICES AND OTHER POLICIES APPLICABLE TO SUCH THIRD PARTY MATERIALS. PLEASE REVIEW ALL SUCH TERMS AND POLICIES CAREFULLY.

CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MIGHT HAVE ADDITIONAL RIGHTS.

Limitation on Liability

UNDER NO CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, WILL FACEBOOK ENTITIES OR THEIR LICENSORS OR SUPPLIERS BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR EXEMPLARY DAMAGES, INCLUDING FOR ANY LOST PROFITS OR LOST DATA, THAT RESULT FROM YOUR USE OR YOUR INABILITY TO USE THE FACEBOOK SERVICE, THE FACEBOOK WEBSITES OR ANY APPLICATIONS, FEATURES, CONTENT OR THIRD PARTY MATERIALS MADE AVAILABLE ON, IN CONJUNCTION WITH OR THROUGH THE FACEBOOK SERVICE, EVEN IF FACEBOOK OR A FACEBOOK AUTHORIZED REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. IN SUCH CASES, FACEBOOK'S LIABILITY WILL BE LIMITED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

IN NO EVENT WILL THE TOTAL AGGREGATE LIABILITY TO YOU OF FACEBOOK ENTITIES OR OF THEIR LICENSORS OR SUPPLIERS FOR ALL DAMAGES, LOSSES, CLAIMS AND CAUSES OF ACTION ARISING OUT OF OR RELATING TO THESE TERMS OR YOUR USE OF THE FACEBOOK SERVICE, INCLUDING WITHOUT LIMITATION YOUR INTERACTIONS WITH OTHER USERS OF THE FACEBOOK SERVICE (WHETHER IN CONTRACT, TORT INCLUDING NEGLIGENCE, WARRANTY OR OTHERWISE) EXCEED THE AMOUNT PAID BY YOU, IF ANY, TO FACEBOOK DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING THE DAY THE ACT OR OMISSION OCCURRED THAT GAVE RISE TO YOUR CLAIM OR \$100, WHICHEVER IS GREATER.

Termination and Changes to the Facebook Service

We may terminate your account on the Facebook Service, delete your profile and any User Content you have Posted on or through the Facebook Service, and/or prohibit you from using or accessing the Facebook Service (or any portion thereof) for any or no reason, at any time in our sole discretion, with or without notice. Further, we reserve the right to change any aspect or feature of the Facebook Service at any time without notice. The following sections will survive

any termination of your use of the Facebook Service: Prohibited Conduct, User Content, Your Privacy Practices, Gift Credits, Ownership; Proprietary Rights, Licenses, Submissions, User Disputes; Complaints, Indemnity, General Disclaimers, Limitation on Liability, Termination and Changes to the Facebook Service, Arbitration, Governing Law; Venue and Jurisdiction and Other.

Arbitration

Except as set forth in the paragraph below, you agree that all claims and disputes between you and Facebook that arise out of or relate in any way to the Terms or your use of the Facebook Service will be resolved either by (a) binding arbitration by a single arbitrator in Santa Clara County, California or (b) binding non-appearance based arbitration conducted by telephone, online or based solely on written submission. Such arbitration will be administered by Judicial Arbitration and Mediation Services ("JAMS") (see www.jamsadr.com) pursuant to its Comprehensive Arbitration Rules. The arbitrator's award will be binding and may be entered as a judgment in any court of competent jurisdiction.

With respect to any claims or disputes you intend to bring on behalf of a class, you agree to arbitrate whether a class could be certified before bringing such action in a court of law. If the arbitrator refuses to certify the class, you will continue to resolve your individual claims or disputes through binding arbitration. If the arbitrator finds that a class should be certified, you may file the class action in a court of law provided you waive any right to a trial by jury. Claims for injunctive or other equitable relief may also be brought in a court of law.

Governing Law; Venue and Jurisdiction

You agree that all claims and disputes between you and Facebook that arise out of or relate in any way to the Terms or your use of the Facebook Service will be governed by the laws of the State of California (and United States federal laws applicable therein), without regard to principles of conflict of laws. You further agree that you will bring any claims or disputes that are not subject to arbitration (as set forth above) in, and you submit to the exclusive jurisdiction of, the state and federal courts located in Santa Clara County, California.

Other

The "Facebook Service" means the features, services and properties that Facebook makes available through (a) www.facebook.com or any other Facebook-branded or co-branded website (including, without limitation, any and all sub-domains and all international, mobile versions and successors thereof), (b) the Facebook Platform and (c) other media, devices or networks now existing or later developed. Unless otherwise specified, the terms "includes," "including," "e.g.," "for example," and other similar terms used herein are deemed to include the term "without limitation" immediately thereafter. Our failure to exercise or enforce any right or provision of these Terms will not constitute a waiver of such right or provision in that or any other instance. If, for any reason, any provision of these Terms or portion thereof is rendered invalid or unenforceable, the remainder of these Terms will remain in full force and effect and will be

enforced to the maximum extent permissible so as to effect the intent of the parties. An arbitrator or court will substitute or rewrite any invalid or unenforceable term or provision to make such term or provision valid and enforceable. All communications and notices to be made or given pursuant to these Terms will be in the English language. You consent to receiving communications and notices from Facebook at the email address you provide in registering for the Facebook Service or otherwise elect in your [account settings](#). These Terms constitute the entire agreement and supersede any prior agreement between you and us regarding your use of the Facebook Service.

Questions

Please visit our [Help](#) pages for more information.